

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MICHAEL W. AND JUDITH A. DOOLING)

For Appellants: Michael W. Dooling, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Michael W. and Judith A. Dooling against a proposed assessment of additional personal income tax in the amount of \$275.13 for the year 1969.

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Appellants' 1969 federal income tax return was audited by the Internal Revenue Service. The following adjustments were made: (1) disallowance of a claimed deduction for intangible oil or gas drilling costs in the amount of \$13,500 for failure to substantiate such expenditures; (2) allowable business expense deductions were increased in the amount of \$2,951; and (3) allowable medical expense deduction was decreased by \$245 to conform to the net increase in adjusted gross income. These changes resulted in a federal deficiency of \$2,561. After receiving a copy of the federal audit report, respondent issued its notice of proposed assessment incorporating the federal changes. Appellants protested the proposed assessment on the grounds that they had contested the federal adjustments and a final determination had not been rendered. Thereafter, appellants provided respondent with a "Statement of Tax Due on Federal Tax Return" for 1969 indicating that their final federal deficiency for that year had been reduced from \$2,561 to \$2,352 plus interest. During the course of the appeal appellants also submitted a copy of a stipulated judgment of the United States Tax Court indicating that their final federal deficiency for 1969 was \$2,352. ^{1/}

Respondent revised its proposed assessment in accordance with the amount of the federal determination as finally determined. Respondent's method of computing the revision to its original adjustments was as follows:

Additional federal tax per statement	\$ 2,352
Add: Federal tax per return	450
Total tax including self-employment tax and surcharge.	\$ 2,802
Less: Self-employment tax	(538)
Income tax including 10% surcharge	\$2,264
Less: Tax surcharge	(206)
Final normal tax	<u>\$ 2,058</u>

^{1/} In addition, the "Statement of Tax Due on Federal Tax Return" bore a handwritten notation that appellants' 1969 federal deficiency was \$2,242 as the result of income averaging. No similar indication was reflected in the stipulated judgment of the tax court. This amount was not considered by respondent in computing its final proposed assessment because there was no indication when the handwritten notation was added or by whom, and because sufficient information was not presented to determine whether appellants were entitled to income average for state purposes.

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Taxable income based on normal tax of \$2,058	\$11,082
Less: Taxable income per return	(1,150)
Amount of final adjustments	\$ 9,932
Amount of adjustments per original federal audit report	10,794
Revision to original adjustments	\$ (862)

In accordance with this computation, respondent reduced its original adjustments to appellants' income by \$862 to reflect the similar treatment at the federal level. Appellants maintain that their federal adjustments were reduced by \$2,750 and base their appeal on that allegation. Appellants also contend that they were entitled to income average for 1969.

The primary issue for resolution is whether appellants have met their burden of establishing that a federal determination relied upon by respondent in issuing a proposed assessment was erroneous.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well **settled that a determination** by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. (*Todd v. McColgan*, 89 Cal. App. 2d 509 [201 P.2d 4141 (1949)]; Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973.) Appellants have provided no evidence in support of their position that the original federal adjustments to their 1969 income were reduced by \$2,750 other than their unsupported statements. In the absence of such evidence, respondent's position that the original federal adjustments were reduced by only \$862 must be sustained.

With respect to their claimed entitlement to income average for 1969, appellants submitted a copy of a federal Schedule G which they claim was used for federal purposes. The information contained therein merely reflected the federal taxable income figures for 1969 and the base period years. Despite requests to do so by respondent, appellants did not provide any details of the computation of their state taxable income figures for the base period years. Since this information was unavailable to respondent, respondent was unable to determine if appellants were entitled to income average for state purposes during the appeal year. Therefore, respondent denied appellants the benefits of income averaging for 1969.

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The burden of establishing the right to income average is upon appellants. (Appeal of Dare and Patricia Miller, Cal. St. Bd. of Equal., March 18, 1975; Appeal of Joseph J. and Julia A. Battle, Cal. St. Bd. of Equal., April 5, 1971.) Since, during the course of this appeal, appellants have failed to submit to this board any evidence tending to establish their right to income average for 1969, we must conclude that respondent's action in this regard was correct.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Michael W. and Judith A. Dooling against a proposed assessment of additional personal income tax in the amount of \$275.13 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of January, 1979, by the State Board of Equalization.

Valencia Burrell Chairman
Robert J. [unclear], Member
John R. [unclear], Member
_____, Member
_____, Member